

WILLKIE FARR & GALLAGHER

EX PARTE

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MAR 9 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

March 9, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals, 445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

Yesterday, on behalf of the Association of Directory Publishers ("ADP"), Theodore Whitehouse and the undersigned met with William A. Kehoe III and Daniel R. Shiman of the Common Carrier Bureau to discuss the status of the rulemaking proceeding in the above-referenced docket.

Specifically, ADP urged the Commission to adopt rules defining a "reasonable" price for subscriber list information ("SLI") under Section 222(e) of the Communications Act of 1996, codified at 47 U.S.C. § 222(e). In addition, ADP requested that the Commission adopt a presumptive benchmark price for SLI, both for the initial load and updates of the initial load, that is based on local exchange carriers' cost of providing listings to independent publishers.

In addition, at his request, several documents were forwarded to Daniel R. Shiman following the meeting: (1) BellSouth Cost Study (Feb. 8, 1993); (2) Petition of MCI Telecommunications Corp. for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996, Arbitration Award, Docket No. 19075 (Aug. 13, 1998); (3) Petition of MCI Telecommunications Corp. for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996, Order Approving Amendments to Interconnection Agreement, Docket No. 19075 (Dec. 1, 1998). Copies of these documents are attached to this filing.

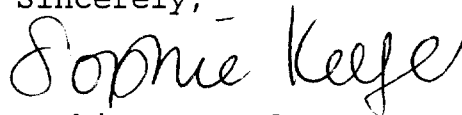
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Washington, DC
New York
Paris
London

Ms. Magalie Roman Salas
March 9, 1999
Page 2

Pursuant to the Commission's rules, two (2) copies of this letter are being filed. Please call the undersigned at (202) 429-4730 if you have any questions regarding this filing.

Sincerely,

A handwritten signature in cursive script that reads "Sophie Keefer". The signature is written in dark ink and is positioned directly below the word "Sincerely,".

Sophie J. Keefer

Enclosures

CC: William A. Kehoe III
Daniel R. Shiman

504
3.



Southern Bell

Marshall M. Criser III
Operations Manager
Regulatory Relations

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MAR 9 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Suite 400
150 South Monroe Street
Tallahassee, Florida 32301-15561
904 222-1201
FAX 904 222-8640

8 February 1993

Mr. Walter D'Haeseleer
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0866

Re: DADS and DPDS Data Request

Dear Mr. D'Haeseleer:

Attached is Southern Bell's response to the above noted request.

If I can be of any further assistance, please advise.

Yours very truly,

for Operations Manager - Regulatory Relations
Attachment

Dec

COST STUDY
DIRECTORY ASSISTANCE DATABASE SERVICE
DIRECTORY PUBLISHERS DATABASE SERVICE

*
1. Introduction and Overview

This cost study is performed to identify the incremental cost of Directory Assistance Database Service (DADS) and Directory Publishers Database Service (DPDS).

DADS provides a base file of directory listings and a daily update file of directory listing changes. These files are provided by Central Offices (by central office prefix, i.e., NNX) via magnetic media. This data is intended for customers providing alternate directory assistance service.

DPDS provides an extract of directory listings by requested Central Offices (by central office prefix, i.e., NNX). It also provides optional weekly reports of Central Office Business Activity.

The cost of both services includes, where appropriate, the labor cost for system development and maintenance, computer processing cost to produce the listing data, and material/packaging/delivery cost for the magnetic and paper media.

* 3. Description of Procedures

The estimated programmer analyst's hours for program development was divided by the number of requests over the initial three years to develop the average hours per file/extract. Similarly, the annual maintenance hours were divided by the average annual requests. The respective software costs were produced by multiplying these results by the appropriate directly assigned labor cost.

The Computer Processing Unit (CPU) hours required for the extracts were multiplied by the CPU cost per hour to develop the data processing costs.

Material cost for the magnetic tapes and the paper output, along with delivery, were added to the software and data processing costs. This result was divided by the average listings that will be billed each month to produce the cost per listing for each service.

For the Weekly Business Reports, the CPU hours were negligible.

Southern Bell Telephone & Telegraph Company
FPSC Staff's Data Request
DADS/DPDS
08 February 1993
Item No. 1
Page 1 of 1

Item No. 1: What are the costs for providing DADS and DPDS. Provide the cost study.

Response: See Attached.

DIRECTORY ASSISTANCE DATABASE SERVICE (DADS)
DIRECTORY PUBLISHERS DATABASE SERVICE (DPDS)
1993 INCREMENTAL UNIT COST

STATE: FLORIDA
DATE: 04 JAN 1993
SUMMARY

=====

DADS
BASE FILE

COST PER LISTING

\$0.001

FILE UPDATES

COST PER CO FILE PER MONTH

\$11.81

*
DPDS

CENTRAL OFFICE EXTRACT
COST PER LISTING

\$0.003

BUSINESS ACTIVITY REPORT
COST PER LISTING

\$0.004

IRECTORY PUBLISHERS DATABASE SERVICE (DPOS)
1993 INCREMENTAL UNIT COST

STATE: FLORIDA
DATE: 15 OCT 1992
WORKPAPER 3
PAGE 1 OF 1

LINE	DESCRIPTION	SOURCE	AMOUNT
CENTRAL OFFICE EXTRACT			
1	PROGRAM DEVELOPMENT, HOURS PER CO EXTRACT		0.51
2	DIRECTLY ASSIGNED LABOR COST PER HOUR		\$44.35
3	PROGRAM DEVELOPMENT COST PER CO EXTRACT	LN1xLN2	\$22.62
4	PROGRAM MAINTENANCE, HOURS PER CO EXTRACT		
5	DIRECTLY ASSIGNED LABOR COST PER HOUR		0.75
6	PROGRAM MAINTENANCE COST PER CO EXTRACT	LN4xLN5	\$44.35 \$33.26
7	DATA PROCESSING COST PER CO EXTRACT		\$17.25
8	MAG TAPE, PACKAGING AND DELIVERY COST PER CO EXTRACT		\$39.00
9	GROSS RECEIPTS (GRT) TAX		1.0138
	TOTAL COST PER CO EXTRACT	(LN3+LN6+LN7+LN8)LN9	\$113.68
11	AVERAGE LISTING PER CO EXTRACT		35,900
12	TOTAL COST PER LISTING	LN10/LN11	\$0.003

CENTRAL OFFICE BUSINESS ACTIVITY REPORT

13	ADMINISTRATION, PACKAGING AND DELIVERY COST ASSOCIATED WITH LISTING PRINTOUT PER CO BUSINESS ACTIVITY REPORT		\$129.39
14	TOTAL COST PER CO BUSINESS ACTIVITY REPORT	LN13xLN9.	\$131.18
15	AVERAGE LISTINGS PER CO EXTRACT		35,900
16	TOTAL COST PER CO LISTING	LN14/LN15	\$0.004

DIRECTORY ASSISTANCE DATABASE SERVICE (DADS)
1993 INCREMENTAL UNIT COST

STATE: FLORIDA
DATE: 04 JAN 1993
WORKPAPER 1
PAGE 1 OF 1

LINE	DESCRIPTION	SOURCE	AMOUNT
	BASE FILE		
1	PROGRAM DEVELOPMENT, HOURS PER CO FILE		
2	DIRECTLY ASSIGNED LABOR COST PER HOUR		0.13
3	PROGRAM DEVELOPMENT COST PER CO FILE	LN1xLN2	\$44.35
			\$5.77
4	DATA PROCESSING COST PER CO FILE		\$2.30
			\$2.30
5	MAG TAPE, PACKAGING AND DELIVERY COST PER CO FILE		\$0.40
			\$0.40
6	GROSS RECEIPTS (GRT) TAX		1.0138
			1.0138
7	TOTAL COST PER CO	(LN3+LN4+LN5)LN6	\$8.58
	AVERAGE LISTINGS PER CO FILE		14372
			14372
9	TOTAL COST PER LISTING	(LN7/LN8)	\$0.001
			\$0.001

RECTORY ASSISTANCE DATABASE SERVICE (DADS)
3 INCREMENTAL UNIT COST

STATE: FLORIDA
DATE: 04 JAN 1993
WORKPAPER 2
PAGE 1 OF 1

LINE	DESCRIPTION	SOURCE	AMOUNT
	FILE UPDATES		
1	PROGRAM MAINTENANCE, HOURS PER CO FILE PER MONTH		0.01
2	DIRECTLY ASSIGNED LABOR COST PER HOUR		\$44.35
3	PROGRAM MAINTENANCE COST PER CO FILE PER MONTH	LN1xLN2	\$0.44
4	DATA PROCESSING COST PER CO FILE PER MONTH		\$2.41
5	MAG TAPE, PACKAGING AND DELIVERY COST, CO FILE PER MONTH		\$8.80
6	GROSS RECEIPTS (GRT) TAX		1.0138
7	TOTAL COST PER CO FILE PER MONTH	(LN3+LN4+LN5)LN6	\$11.81

Southern Bell Telephone & Telegraph Company
FPSC Staff's Data Request
DADS/DPDS
08 February 1993
Item No. 2
Page 1 of 1

Item No. 2: How were these costs developed (i.e., method) and why are they appropriate.

Response: Incremental cost methodology was used to develop costs for DADS and DPDS. These are the costs resulting directly from providing additional units of service. Prices for discretionary services should be set at a level which at least covers the direct costs incurred, therefore, incremental cost methodology provides the proper test for pricing decisions. A description of the specific cost development is contained in the cost study provided in response to item number 1.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 3

REQUEST: Explain How DADS and DPDS work independently and dependently.

RESPONSE: DADS and DPDS are separate and discrete services. They are not dependent upon one another in any way. The DADS and DPDS tariffs require that the listing information provided by each service offering be used for different purposes.

Subscribers may use DADS listing information solely for the purpose of providing Directory Assistance type services. Subscribers may use DPDS listing information solely for the purpose of publishing directories and selling advertising to be contained in the directories they publish.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 4

REQUEST: Can a customer subscribe to DPDS and not subscribe to DADS? Why or Why not.

RESPONSE: Yes, a customer may subscribe to DPDS and not subscribe to DADS. These two distinct tariff offerings are contained in different tariff Sections; A38.1 for DADS and A38.2 for DPDS. Each service has its own Description of Service, Regulations, Rates and Charges.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 5

REQUEST: Provide a working example of DADS and DPDS.

RESPONSE: An interexchange carrier, for example, may request DADS listing information for customers located in the town of Hypothetical, Florida, which is served by ten Southern Bell Central Offices (COs). This customer would request DADS listing information for all ten COs in Hypothetical, a total of 100,000 listings. The Company would ship to the customer magnetic tapes containing the DADS Base File listing information. Each day following, the Company would ship to the customer magnetic tapes containing DADS Daily Updates. The customer would be billed according to the rates and charges defined in the tariff. For each Base File, the customer would pay \$.04; a total non-recurring charge of \$4,000. For the Daily Updates, the customer would pay the \$13.59 per month. For each time that the customer uses a DADS listing to provide his directory assistance service, the customer would pay \$.15. Assuming that this customer uses each DADS listing once a month, the customer would pay \$15,000 per month.

A Directory Publisher, for example, wanting to subscribe to DPDS for the the same jurisdiction as the DADS subscriber above would pay \$.04 per listing for his Base File; a total non-recurring charge of \$4,000. This customer may opt to receive the Weekly Business Activity Report. Assuming that there would be 500 updates to the listings in Hypothetical per month, the customer would pay \$30 per month.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 6

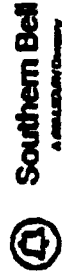
REQUEST: Is this service offered in any other states? If so where and what is the rate structure.

RESPONSE: Southern Bell knows of no other states where a DADS offering is being provided. DPDS is presently being offered under contract in all Southern Bell states. The contract charges for DPDS are similar to those proposed in the tariff filing. Southern Bell is planning to file tariffs for both services in all states it serves.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 7

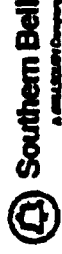
REQUEST: Provide a sample of a customer bill.

RESPONSE: An example of a customer bill follows as an attachment.
(See Attachment 1)



Southern Bell
A Southern Company

Account Number: 407-412-3456 000 0046
Bill Date: MAR 16, 1993 NOCS
Page 1



Southern Bell
A Southern Company

Account Number: 407-412-3456 000 0046
Bill Date: MAR 16, 1993 NOCS
Page 2

DATE	DESCRIPTION	AMOUNT
APR 5	Monthly Service Charge	\$3,851.54
APR 5	Monthly charge for updating 0000	\$0.00
APR 5	Monthly charge for updating 0000	\$3,851.54
APR 5	Monthly charge for updating 0000	\$3,851.54

Detailed Statement of Charges

Monthly Service Charge

- Monthly charge for updating 0000
March 16 - April 16

Other Charges and Credits

MAR 16 93 75196

Hidden Numbers

AMOUNT	TOTAL
13.59	13.59

Subtotal

SAMPLE BILL ONLY FOR DADS

***** PLEASE FOLD, TEAR JIMBE AND RETURN THIS PORTION WITH YOUR PAYMENT. *****

DATE	DESCRIPTION	AMOUNT
APR 5	Monthly Service Charge	\$3,851.54
APR 5	Monthly charge for updating 0000	\$0.00
APR 5	Monthly charge for updating 0000	\$3,851.54
APR 5	Monthly charge for updating 0000	\$3,851.54

407-412-3456 000
MAR 16, 1993
CF 1019 RAT 000046

Please make check payable to Southern Bell.

P. O. BOX 1234
JACKSON, FL
33555-1234

SA COMPANY
1628 BRUCE ST
JACKSON, FL 39206

MAR 92

- Other Charges and Credits (continued)**
- Charge for 50,000 0000 listings at .04 per listing.
 - Charge for 10,000 0000 listings at .35 per listing.

Subtotal

Taxes/Fees Imposed by Government

- Federal Tax
- State/Local Sales Tax

Subtotal

AMOUNT	TOTAL
2,000.00	2,000.00
1,500.00	1,500.00
3,500.00	3,500.00
162.00	162.00
175.95	175.95
337.95	337.95

SAMPLE BILL ONLY FOR DADS

02. 03. 93 06:30PM

P 02



SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

FROM BELL
MARCH 1993

FORWARD PAYMENT TO

P. O. BOX 1234
JACKSONVILLE, FL 55555-1234

ACCOUNT OR
BILL NUMBER MA011-1234-567DATE OF BILL 03-16-93

Directory Publishing Company
1624 Brake ST
Jacksonville, FL 12345

TOTAL AMOUNT DUE \$ 1,402.08

(PLEASE RETURN THIS PORTION OF BILL WITH YOUR PAYMENT)

ACCOUNT OR
BILL NUMBER MA011-1234-567DATE OF BILL 03-16-93

CHARGES FOR DPDS LISTING INFORMATION PROVIDED
TO DA PUBLISHING COMPANY FOR USE IN PUBLISHING
ITS JACKSONVILLE, FL DIRECTORY.

CHARGE FOR 32,552 LISTINGS AT \$.04 PER LISTING ---

PROCESSING FEE -----

1,302.08

100.00

1,402.08

*old contract rate
- not tariffed*

XXXXX SAMPLE BILL ONLY FOR DPDS XXXXX

PLEASE DEDUCT FROM "TOTAL AMOUNT DUE" ANY
PORTION OF THIS AMOUNT ALREADY PAID

BALANCE FROM LAST BILL

PLEASE PAY BY APRIL 5, 1993

TOTAL AMOUNT DUE

1,402.08

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 8

REQUEST: How does a customer access DADS and DPDS?

RESPONSE: DADS and DPDS are not network services. Both DADS and DPDS are provisioned by delivering magnetic tape and paper materials to the subscribing customer via courier.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 9

REQUEST: Provide a network diagram DADS and DPDS?

RESPONSE: Because these are not network services, there are no network diagrams for either DADS or DPDS.
(See response to Item No. 8)

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 10

REQUEST: What prevents a customer from reselling DPDS for purposes of solicitation?

RESPONSE: Paragraph A38.2.2(G) of the proposed tariff prevents a customer from reselling DPDS. Resale of DPDS is not a permitted use. The proposed tariff wording reads:

"... Except for the permitted uses, the customer shall not disclose DPDS to others and shall use due care in providing for the security and confidentiality of DPDS. ..."

Permitted uses of DADS are defined in Section A38.1.1.(A) which describes DADS service and which reads:

"... Upon request, the Company will provide local exchange subscriber name, address and telephone number listings ... solely for the customer's expressed purpose of providing Directory Assistance type services to its end users. ... Directory Assistance type services are defined as:

1. Voice Directory Assistance (DA Operator or DA Operator System assisted), and
2. Electronic Directory Assistance (Data Systems assisted)."

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 11

REQUEST: Are the data bases strictly limited to COs and not geographical areas. If so, explain why.

RESPONSE: When ordering either DADS or DPDS, a customer must order by Central Office (CO). Southern Bell does not maintain any information in its listing database which would allow it to aggregate listing information by geographical location. The smallest unit by which the Company can extract listing information is by CO prefix code. A DADS or DPDS subscriber may order DADS and/or DPDS service for any geographical area that Southern Bell serves by ordering the CO codes corresponding to the area desired. Our Customer Services personnel will help the customer determine what codes he needs in order to obtain DADS/DPDS information for the geographical area desired.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 12

REQUEST: DADS and DPDS was not proposed in your over earning review. Why.

RESPONSE: The services considered in the earnings review were active services. Because DADS and DPDS were not tariffed at the time of the earnings review, they were not considered.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 13

REQUEST: What is included in the administrative fee? Provide a breakdown of all administrative costs.

RESPONSE: Provision of the Daily Updates is included in the administrative fee. The costs associated with providing the Daily Updates are auditing costs, program maintenance, data processing, tape packaging and delivery and gross receipts tax.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
FRR 0125 PSC DADS/DPDS
February 8, 1993
Item No. 14

REQUEST: Do you consider DA (411, HNPA, FNPA) a competitive service? Why.

RESPONSE: Southern Bell's answer is as stated in response to the Staff's similar question in FPSC Docket 920260-TL, Staff's Tenth Set of Interrogatories dated October 23, 1992, Item No. 329. The response is repeated below:

"Yes, Southern Bell believes that there is competition for directory assistance (DA) from sources providing DA like services in some jurisdictions. (Various telephone listing services are available from sources other than the LECs through which competitors may potentially displace the LECs' DA demand and revenues (for example, physician locator services and carrier provided electronic locator services).) Although Southern Bell is not able to quantify the impact of these competitive services on LEC DA demand and revenues at present, we expect competition for LEC provided DA to grow measurably in the near term."

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
FRR 0125 PSC DADS/DPDS
February 8, 1993
Item No. 15

REQUEST: Do you consider directory assistance access service a competitive service?

RESPONSE: Directory Assistance access service could become competitive upon the implementation of DADS.

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Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 16

REQUEST: Section A38, Original page 3 of the proposed tariff, it states, "Prior to receipt of the Base File the customer must provide the Company with a written plan outlining the method used to record and accumulate the amount of usage to be reported to the Company." How will this usage be determined?

RESPONSE: Usage will be determined as outlined in Section A38, paragraphs J, K, L, M and N which read:

"... The customer shall remit to the Company monthly an itemized statement of usage by Central Office. ... The customer shall make available to the Company upon request necessary records to allow the Company to audit the number of times a listing has been used. ... The Company may terminate the service when it has reasonable grounds to believe that full payment is not being made. ... The customer will be billed a usage charge as determined by the Company in the event the customer does not report their usage on a monthly basis. ... Prior to receipt of the Base File the customer must provide the Company with a written plan outlining the method used to record and accumulate the amount of usage to be reported to the Company. ..."

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 17

REQUEST: When a customer subscribes to DPDS, who produces the directory, Southern Bell or the customer?

RESPONSE: When a customer subscribes to DPDS, the customer produces his own directory.

Southern Bell Tel. & Tel. Co.
FPSC Staff's Data Request
DADS/DPDS
February 8, 1993
Item No. 18

REQUEST: Why is Southern Bell proposing a 12 month minimum subscription period?

RESPONSE: Southern Bell is proposing a 12 month minimum subscription period in order to accommodate planning required to adjust to potential changes in force requirements in provisioning its own Directory Assistance services.

what?

DOCKET NO. 19075

PETITION OF MCI
TELECOMMUNICATIONS
CORPORATION FOR ARBITRATION
OF DIRECTORY ASSISTANCE
LISTINGS ISSUES UNDER FEDERAL
TELECOMMUNICATIONS ACT OF
1996

§
§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ARBITRATION AWARD

I	INTRODUCTION	
II	DECISIONS ON ISSUES PRESENTED FOR ARBITRATION	
A.	FTA REQUIREMENTS	3
B.	DA LISTINGS OF INDEPENDENT TELECOMMUNICATIONS CARRIERS	7
C.	911 AND E911 ISSUES	10
D.	PRICING	11
E.	RESTRICTIONS ON USE OF DA LISTINGS	14
III	IMPLEMENTATION SCHEDULE	15
IV.	CONCLUSION	16

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PUBLIC UTILITY COMMISSION
FILMS & CO. INC.

I. INTRODUCTION

The Federal Telecommunications Act of 1996¹ (FTA) requires that when an incumbent local exchange company (ILEC) and a new local service provider (LSP) are unable to negotiate the terms and conditions of interconnection agreements, either of the negotiating parties "may petition a State commission to arbitrate any open issues." FTA § 251(b)(1). The Public Utility Commission of Texas (the Commission) is responsible for arbitrating disputes pursuant to the FTA.² The Commission anticipated it would be called upon to resolve disputes under the FTA, and promulgated a dispute resolution rule that established procedures for conducting arbitration proceedings.³

On March 18, 1998, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively MCI or Petitioner) petitioned the Commission to resolve disputes with Southwestern Bell Telephone Company (SWBT) over the pricing and availability of directory assistance listings in SWBT's directory assistance database.

The Commission's arbitration panel (the Arbitrators) is composed of two Commission staff members: Howard Siegel from the Office of Policy Development and Lynne LeMon from the Office of Regulatory Affairs. Mr. Siegel and Ms. LeMon were sworn in as Arbitrators on July 8, 1998 and conducted the arbitration hearing on July 9, 1998 in accordance with the Commission's dispute resolution rules. The Arbitrators' decisions on disputed issues are found in Section II. of the Arbitration Award. Section III. includes the implementation schedule. Section IV includes the Arbitrators' conclusions.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 251 *et seq.* Hereinafter, all citations to FTA will be to the 1996 Act as codified in the United States Code. (FTA).

² The Commission has the authority to conduct the FTA arbitrations pursuant to § 252 of FTA and §§ 14.001, 52.001-002, 60.001-003, and 60.121-128 of Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§11.001-63.063 (Vernon 1998) (PURA).

³ P.U.C. PROC. R. §§ 22.301 - 22.310 (establishes procedures for mediation, arbitration, and approval of interconnection agreements under FTA).

II. DECISIONS ON ISSUES PRESENTED FOR ARBITRATION

The following decisions represent the Arbitrators' resolution of issues presented for arbitration by SWBT and MCI. Issues, and their related decisions, are grouped by topic. Because FTA § 252(b)(4) limits issues that may be decided in arbitration to those set forth by the parties, the Arbitration Award addresses only the issues presented for arbitration.

A. FTA REQUIREMENTS

The parties presented three issues requiring an interpretation of FTA requirements pertaining to directory assistance. The issues are:

- Issue 1 *Does the Federal Telecommunications Act of 1996 (FTA) require SWBT to provide to MCI any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT and/or affiliates in providing directory assistance services to end users?*
- Issue 2 *Whether SWBT has met the requirements of FTA Section 251(c)(3) for unbundled access to SWBT's directory assistance database by offering MCI the ability to read the information contained in the database, and to enter its own customer information into the database?*
- Issue 3 *Whether SWBT has met the requirements of FTA Section 251(b)(3) by offering MCI access to SWBT's directory assistance listing information in readily accessible tape or electronic format*

1. PARTIES' POSITIONS

MCI requests access to SWBT's directory assistance database listings in bulk format,⁴ rather than on a dip-by-dip basis.⁵ MCI's position is that directory assistance listings and access to the directory assistance database are unbundled network elements (UNEs). According to MCI,

⁴ The bulk format requested by MCI means that SWBT would provide access to all of its directory assistance listings simultaneously rather than on an individual basis.

⁵ Dip-by-dip is the term used by the parties to refer to directory assistance access on a per listing basis.

FTA § 251(c)(3) requires that directory assistance database listings be provided in bulk format as UNEs at rates based upon total element long run incremental costs (TELRIC).

SWBT argues that there is a distinction between access to directory assistance service, access to the directory assistance database and access to directory listings (also referred to as subscriber list information). According to SWBT, each of these carry distinctly differing obligations under the FTA. SWBT's position is that directory assistance listings are governed by FTA § 251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to § 251(b)(3) of the FTA, they are not UNEs and the obligation to base the price upon TELRIC does not exist. SWBT believes it meets its obligations to MCI, pursuant to FTA § 251(b)(3), by providing access to directory assistance listings in bulk format at market-based rates.

2. DISCUSSION OF THE ISSUES

On September 30, 1997, the Commission established that access to the directory assistance database is a UNE.⁶ Similarly, on December 19, 1997, the Commission defined directory assistance listings as UNEs.⁷ Because both access to the directory assistance database and directory assistance listings are UNEs, they are governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. In particular, FTA § 252(d)(1) states that the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE, shall be nondiscriminatory and may include a reasonable profit.

⁶ Docket No. 16189 et al, Arbitration Award, Appendix C, page 45, September 30, 1997.

⁷ Docket No. 16189 et al, Arbitration Award, Appendix C, page 4, December 19, 1997.

A review of the FCC's First Report and Order⁸ following enactment of the FTA is useful for evaluating FTA requirements associated with UNEs. A summary of key provisions in the First Report and Order are:

- The FCC concluded that the definition of the term "network element" broadly includes all "facilit[ies] or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."⁹ (emphasis added)
- The FCC required ILECs to provide unbundled access to call-related databases and directory assistance facilities.¹⁰
- The FCC cited a shared use arrangement between GTE and Pacific Bell as "one possible method" of access to the directory assistance database and operator service database.¹¹

Key provisions in the FCC's Second Report and Order include:

- The FCC determined that it is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases.¹²
- To meet the requirement of nondiscriminatory access, a LEC must offer competitors access at least equal in quality to the access received by the LEC.¹³

⁸ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996) (FCC Interconnection Order).

⁹ Id. ¶ 262.

¹⁰ Id. ¶ 366, 516 and 534.

¹¹ Id. ¶ 538.

¹² Second Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 144 (Aug. 8, 1996) (FCC Interconnection Order).

¹³ Id.

The Arbitrators view MCI's request for directory assistance listings in bulk format as one possible method of obtaining nondiscriminatory access to SWBT's directory assistance database. The key term is "nondiscriminatory." Because SWBT has bulk access to directory assistance listings in its database, MCI is entitled to such access.

To the issue of whether SWBT's obligation is required by FTA § 251(b)(3) or § 251(c)(3), the Arbitrators note that there is some ambiguity in the FCC's orders. For example, SWBT argues that the bulk directory assistance listings requested by MCI are not a database or any other facility specified by the FCC as a UNE. MCI argues that access to bulk directory assistance listings is, in effect, access to the directory assistance database and, therefore, falls under the FCC's interpretation of FTA § 251(c)(3).

The Arbitrators find that this ambiguity in the FCC's orders need not be addressed because even under SWBT's analysis, the Arbitrators believe it is appropriate to treat directory assistance listings, provided in bulk format, as a UNE. UNEs listed by the FCC are not exhaustive. Instead, state commissions have the authority to identify other facilities as UNEs in addition to those identified by the FCC.

With regard to directory assistance listings provided in bulk format, the Arbitrators find the bulk format to be essential to MCI's method of providing directory assistance. Consequently, the Arbitrators deem the bulk format provision of directory listings to MCI, a method for MCI to obtain nondiscriminatory access to the directory assistance database, to be a UNE.

3. ARBITRATORS' DECISION

SWBT is ordered to provide to MCI, in readily accessible tape or electronic format, access to any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT in providing directory assistance services to end users. The databases referred to in this Award are the two SWBT directory assistance databases currently located in Houston, Texas and Dallas, Texas, that, when combined, include directory assistance listings of SWBT customers located in Texas, listings of businesses located in other states that obtain a Texas

presence, listings of non-Bell customers and listings of certain customers located in states with exchange areas contiguous to Texas.¹⁴

B. DIRECTORY ASSISTANCE LISTINGS OF INDEPENDENT TELECOMMUNICATIONS CARRIERS

The parties presented three issues requiring a decision on the directory assistance listings of independent telecommunications carriers. The issues are:

- Issue 4 *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all independent telecommunications carriers who provide their customer listings to SWBT and/or the customer listings of all independent telecommunications carriers who provide such to SWBT?*
- Issue 5 *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers without the express permission of those carriers?*
- Issue 6 *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers, when those carriers specifically have instructed SWBT that it may not provide such information to other competing providers?*

1. PARTIES' POSITIONS

MCI's position is that the FTA's interconnection provisions require all telecommunications carriers to provide nondiscriminatory access to directory assistance service and directory listings in bulk. MCI further explains that the value of the directory assistance database lies in its totality and, by omitting the listings of twelve carriers who instructed SWBT not to release their directory assistance listings to MCI, the value of the directory assistance database to telecommunications carriers competing with SWBT is diminished.

¹⁴ This order does not require SWBT to provide directory assistance listings to MCI for customers in other SWBT states other than the narrow exceptions listed above.

SWBT's position is that SWBT should not be required to provide access to the directory assistance databases of independent telecommunications carriers to MCI. However, SWBT acknowledges that the FTA requires independent telecommunications carriers to provide nondiscriminatory access to directory listing information. SWBT believes it must honor the instructions of twelve (12) independent local exchange companies to NOT release their information provided to SWBT for inclusion in the directory assistance database.

2. DISCUSSION OF THE ISSUES

FTA § 251(b)(3) clearly and unambiguously imposes a requirement on all telecommunications carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service, as well as a duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. [emphasis added] The Arbitrators interpret this section of the FTA to allow MCI access to all directory assistance listings in SWBT's database regardless of the identity of the underlying carrier. This interpretation is consistent with the Commission's treatment of access to white page directory listings in the Arbitration Order dated November 8, 1996.¹⁵

The Arbitrators' interpretation of FTA requirements is also consistent with the FCC's analysis of the issue. The FCC's Second Report and Order¹⁶ states:

Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested.

¹⁵ Docket No. 16189, et al, No. 43. SWBT must provide nondiscriminatory access to all published subscriber listings, regardless of the underlying carrier.

¹⁶ FCC 96-333, ¶ 135, August 8, 1996.

As stated, the FCC limits such access to "listed" numbers. The FCC places responsibility upon carriers in SWBT's position for ensuring that access is permitted "only to the same information that is available to their own directory assistance customers."¹⁷

The Arbitrators view the instructions from twelve carriers prohibiting SWBT from releasing the directory assistance listings of their customers, in bulk, to MCI as creating disparate treatment among competitors in contravention of the explicit requirements of the FTA and the FCC's interpretation of the FTA. Nevertheless, the Arbitrators prefer the twelve carriers be provided an opportunity to voluntarily withdraw their contractual prohibitions rather than invite litigious encounters between the parties. Therefore, the Arbitrators establish a grace period for SWBT and MCI to request voluntary compliance from the twelve carriers.

3. ARBITRATORS' DECISION

SWBT shall provide to MCI access to SWBT's directory assistance databases, in bulk format with nightly updates, including SWBT's directory assistance listings and the listings of independent telecommunications carriers who provide their customer's directory assistance listings to SWBT. This requirement is effective immediately for all telecommunications carriers except the twelve that instructed SWBT not to release directory assistance listings in bulk format. The requirement is effective for those twelve carriers on either (1) the date their contractual prohibition against releasing the listings is withdrawn or (2) November 1, 1998, whichever is sooner. On November 1, 1998, even if contractual prohibitions against the release of directory assistance listing information in bulk format have not been withdrawn, MCI, along with SWBT, shall have bulk format access to listings of the twelve carriers who currently have a prohibition against such access.

¹⁷ Id.

C. 911 AND E911 ISSUES

The parties presented three issues requiring a decision on the availability of 911 and E911 directory assistance listings. The issues are:

- Issue 7 *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all emergency 911 authorities who provide their 10-digit translated telephone number to SWBT and/or the listings of all emergency 911 authorities who provide such to SWBT?*
- Issues 8 *Whether the "DA listings of all emergency 911 authorities" requested by MCI already are included as part of the "directory assistance listing" information provided to MCI in readily accessible tape or electronic format?*
- Issue 9 *Whether SWBT is required by the FTA to provide MCI with any 911 emergency agency listing information that is not available to SWBT's directory assistance operators as part of SWBT's directory assistance listing information?*

1. PARTIES' POSITIONS

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that SWBT will provide, to MCI, SWBT's 7 and/or 10 digit listed numbers of all police, fire, ambulance, poison control, and any other emergency service providers. SWBT will also provide such listed numbers for all independent carriers that have given their consent for SWBT to release their directory listing information. SWBT further stipulates that all 7 and/or 10 digit listed phone numbers for such emergency service providers are maintained in SWBT's directory assistance database.

2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. For the twelve carriers that prohibited SWBT from releasing their directory assistance listings in bulk format to MCI, the time limits under B.3. shall apply.

D. PRICING ISSUES

The parties presented two issues requiring a decision on the pricing of directory assistance listings. The issues are:

- Issue 10 *In accordance with the Public Utility Commission's (PUC) determination that SWBT must provide unbundled network elements (UNEs) to requesting telecommunications providers at TELRIC-based prices, do TELRIC-based rates apply to SWBT's provision of any and all directory assistance databases, including those of independent telecommunications providers and emergency 911 authorities?*
- Issue 11 *Whether SWBT's directory assistance listing information, provided to MCI in readily accessible tape or electronic format, is a network element under FTA Section 251 (c)(3) and therefore subject to the pricing standards for network elements under FTA Section 252(d)(1)?*

I. PARTIES' POSITIONS

MCI's position is that directory assistance listings and access to the directory assistance database are UNEs. According to MCI, FTA § 251(c)(3) requires that UNE rates be based upon TELRIC. MCI offers three rate design proposals with rates lower than the rates proposed by SWBT. MCI prefers that volume-insensitive costs be recovered through a volume-insensitive charge and volume-sensitive costs be recovered through a volume-sensitive charge.

SWBT's position is that directory assistance listings are governed by FTA §251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to §251(b)(3) of the FTA, they are not UNEs and the obligation to base the prices upon TELRIC does not exist. Alternatively, SWBT proposes, if the Arbitrators determine that directory assistance listings are UNEs, the establishment of a bulk format rate of \$.0585 per listing.¹⁸

¹⁸ The rate of \$.0585 per listing [dip-by-dip access] was established in the Commission's Arbitration Award in Docket No. 16189, et al, December 19, 1997, Appendix B, Page 14.

2. DISCUSSION OF THE ISSUES

a. Pricing Methodology

At the Arbitrators' request, SWBT provided two new cost studies to calculate the cost of providing directory assistance listings in bulk format using a TELRIC methodology and a LRIC methodology. As discussed in response to Issues 1, 2 and 3, access to the directory assistance database and directory assistance listings, including directory assistance listings provided in bulk format, are UNEs governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. FTA § 252(d)(1) states that: the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE; shall be nondiscriminatory; and may include a reasonable profit. This Commission has previously adopted the TELRIC methodology for UNE pricing.

b. Determination of Rates

SWBT's TELRIC study indicates that a certain category of costs are not volume-sensitive.¹⁹ SWBT proposes the non-volume sensitive costs be recovered through a per listing rate of \$.0064 for directory assistance listings provided to MCI during the initial load. Thereafter, a lower per listing rate would apply for nightly updates of new or revised directory assistance listings.

Some of the costs associated with providing SWBT's directory assistance listings in bulk format are volume-sensitive. To recover volume-sensitive costs, SWBT proposes two options: a price per updated listing of \$.0019 when provided electronically or a price per updated listing of \$.0026 when provided using magnetic tapes.

The Arbitrators generally agree with the format used by SWBT for calculating the costs, with one exception. SWBT estimated that, on average, only 73% of listings in the directory

¹⁹ Texas 1998-2000, Directory Assistance Listing Cost Study, Total Element Long Run Incremental Cost Study, Form 2.

assistance database would be requested by a carrier for the initial load in bulk format. The Arbitrators prefer to use 100% of bulk format listings as the estimated demand.

The Arbitrators generally agree with SWBT's proposed per listing price structure. The Arbitrators depart from the per listing price structure only with respect to the recovery of non-volume sensitive costs.

The non-volume sensitive costs fall into two categories. First, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to any carrier that requests directory assistance listings in bulk format. Additionally, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to MCI.²⁰ The non-recurring costs charged to MCI shall be shared among the first four carriers requesting directory assistance listings in bulk format. Thus, if other carriers request access to SWBT's directory assistance database listings in bulk format, MCI will receive a partial bill credit of the non-recurring charge billed to MCI and the other carrier(s) will share these costs. SWBT's costs will be fully recovered.

3. ARBITRATORS' DECISION

The Arbitrators hold that TELRIC-based rates shall apply for bulk format access to SWBT's directory assistance database. The rates are listed below in Table 1.0.

Table 1.0
Rates for Access to Directory Assistance Database Listings in Bulk Format

Non-recurring set-up charge, general ²¹	\$11,500
Non-recurring set-up charge, MCI	\$ 4,800
Price per listing, initial load	\$.0011
Price per listing update, electronic	\$.0014
Price per listing update, magnetic tape	\$.0019

²⁰ This category includes costs associated with cost study development.

²¹ This set-up charge applies to customers who opt to request access to SWBT's directory assistance listings in bulk format pursuant to the Arbitration Award.

SWBT shall bill MCI a general non-recurring charge of \$11,500 to set up the initial load of directory assistance database listings. In addition to the general non-recurring set-up charge, SWBT shall also bill MCI a non-recurring charge of \$4,800 to recover the cost of cost study development. Although the \$4,800 charge shall be billed to MCI initially, the \$4,800 charge shall be shared between the first four carriers (including MCI) who request access to SWBT's directory assistance database listings in bulk format. If one or more additional carriers request bulk access, up to the first three additional carriers shall share in recovery of the \$4,800 cost and MCI shall receive a partial bill credit.

Each directory assistance database listing provided to MCI as part of the initial load shall be priced at \$.0011. Thereafter, each updated listing provided to MCI electronically shall be priced at \$.0014. Each updated listing provided to MCI via magnetic tape shall be priced at \$.0019. These rates were developed using SWBT's cost studies and a forecasted demand of 100% of directory assistance listings in SWBT's database.

E. RESTRICTIONS ON THE USE OF DIRECTORY ASSISTANCE LISTINGS

The parties presented two issues requiring a decision on the kinds of restrictions applicable to MCI's use of SWBT's directory assistance listings. The issues are:

- Issue 12 *What restrictions and/or requirements, if any, can SWBT impose on MCI's use of the directory assistance databases and/or the customer listings in such databases upon SWBT's provision to MCI of the databases and/or customer listings in accordance with FTA and applicable FCC and/or PUC rulings?*
- Issue 13 *Whether the directory assistance listing information provided by SWBT may be used by MCI for any purpose other than provision of directory assistance services?*

1. DISCUSSION OF THE ISSUES

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that any directory listing information provided by SWBT to MCI, pursuant to the rates, terms and conditions of their interconnection agreement as it currently exists, or as it may be modified or supplemented based upon the Arbitration Award in this proceeding, will be used by MCI solely for the purpose of providing directory assistance telecommunications services to its retail customers. The term "directory assistance telecommunications services" as used in the Stipulation of Understanding includes, but is not limited to, voice, electronic and reverse directory assistance telecommunications services.

2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. Additionally, the Arbitrators do not require SWBT to provide to MCI access to unlisted telephone numbers or other information that an end user customer designates as private.²² The Arbitrators note that any telecommunications carrier requesting the opportunity to opt into the terms and conditions of this Arbitration Award are required to abide by the restrictions in the Stipulation of Understanding and the Award.

III. IMPLEMENTATION SCHEDULE

The following implementation schedule shall be followed:

November 4, 1998

MCI shall file revisions to its interconnection agreement with Southwestern Bell Telephone Company (SWBT). The pages shall contain a footer stating the revision date.

²² FCC 96-333, ¶ 135, August 8, 1996 and FCC 96-325, ¶ 492, August 8, 1996.

November 16, 1998

Deadline for comments on interconnection agreement from interested parties.

At a to be determined open meeting in December of 1998

Commission approval of MCI's interconnection agreement with SWBT.

IV. CONCLUSION

The primary objective of the Arbitrators in granting MCI's request for access to the directory assistance database in bulk format is to encourage innovation and new product development within the directory assistance service market - an objective consistent with Congress' intent to encourage competition in local exchange markets through enactment of the FTA.

In this arbitration, MCI represented that it wished to control its own destiny in the directory services market and not be limited by the features and functionalities of SWBT's database software. The Arbitrators' decision will enable MCI to expand its directory assistance product line using the features and functionalities inherent in MCI's database system. As stated in the Stipulation of Understanding filed August 6, 1998, new directory assistance telecommunications services include, for example, voice, electronic and reverse directory assistance services.

MCI pointed out that, without bulk access to the listings in SWBT's directory assistance database, MCI would, as a logistical necessity, be required to coordinate with SWBT to introduce each new directory assistance service. Our decision will fully unbundle this network element and will eliminate the inter-dependency of MCI upon SWBT's configuration of its directory assistance database. Moreover, with the provision of bulk access to MCI, SWBT will not have an insider's preview of MCI's new product introductions and promotions of directory assistance service.

The Arbitrators conclude that this Arbitration Award reflects a resolution of disputed issues that complies with standards set in FTA § 251, any applicable regulations prescribed by the Federal Communications Commission (FCC) pursuant to FTA § 251, FTA § 252(c), FTA § 222, relevant provisions of PURA, and the Commission's dispute resolution rules.

SIGNED AT AUSTIN, TEXAS on the 13th day of August, 1998.

FTA § 252 ARBITRATION PANEL


LYNNE LEMON
ARBITRATOR


HOWARD SIEGEL
ARBITRATOR

Commission Staff Arbitration Advisors
Nelson Parish

DOCKET NO. 19075

PETITION OF MCI § PUBLIC UTILITY COMMISSION
TELECOMMUNICATIONS §
CORPORATION FOR ARBITRATION § OF TEXAS
OF DIRECTORY ASSISTANCE §
LISTINGS ISSUES UNDER FEDERAL §
TELECOMMUNICATIONS ACT OF §
1996

ORDER APPROVING AMENDMENTS TO INTERCONNECTION
AGREEMENT

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I. Procedural Background

A. General Background

The Federal Telecommunications Act of 1996¹ (FTA) requires that when an incumbent local exchange carrier (ILEC) and a new local service provider (LSP) are unable to negotiate the terms and conditions of interconnection agreements, either of the negotiating parties "may petition a State commission to arbitrate any open issues." FTA § 251(b)(1). The Public Utility Commission of Texas (the Commission) is the state commission responsible for arbitrating disputes under FTA.² The Commission anticipated it would be called upon to resolve disputes under FTA, and promulgated a dispute resolution rule that established procedures for conducting arbitration proceedings.³

B. Procedural Background in this Docket

On March 18, 1998, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively MCI) filed a petition for compulsory arbitration pursuant to the FTA. The petition concerned MCI's request for directory assistance

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to FTA will be to the 1996 Act as codified in the United States Code.

² The Commission has the authority to conduct the FTA arbitrations pursuant to § 252 of FTA and §§ 1.101, 3.051, 3.451, 3.458, and 3.460 of the Public Utility Regulatory Act of 1995, TEX. CIV. STAT. ANN., Article 1446c-0 (Vernon 1997) (PURA95).

³ P.U.C. PROC. R. §§ 22.301 - 22.310 (establishes procedures for mediation, arbitration, and approval of interconnection agreements under FTA).

listings in bulk format at cost-based, total element long run incremental cost (TELRIC), rates.

The arbitration proceedings were conducted in accord with P.U.C. SUBST. Rs. 22.301 through 22.310 and generally accepted arbitration rules. The procedures applied in those proceedings allow all parties a reasonable opportunity to present their respective positions. The scope of the issues addressed in those arbitration proceedings included issues set out in the decision point list.

Pursuant to its dispute resolution rule, the Commission solicited comments on the Proposed Amendments from interested parties. The Commission received comments from MCI and SWBT but did not receive any comments from nonparties.

The Commission has reviewed the Arbitration Award, the Proposed Amendments, and all other pleadings submitted concerning the Proposed Amendments. Pursuant to FTA § 252(e), the Commission now issues this Order Approving Amendments To Interconnection Agreement. The Commission makes no distinction in its review of the Amendments, whether negotiated or arbitrated, pursuant to the standards in FTA § 252(e)(2) for arbitrated agreements.

II. Discussion Relating to MCI's Disputed Issue

The Proposed Amendments reflect the Arbitrators decision that directory assistance listings provided in bulk format should be available at TELRIC-based rates only when MCI provides directory assistance telecommunications services to MCI's local exchange retail customers. (Award at 15) The Arbitrators reasoned that the availability of directory listings in bulk format at TELRIC-based rates is to allow a competitor to compete with the incumbent local exchange carrier in the provision of local telecommunications services to local retail customers. Moreover, the Arbitrators raised a concern that if TELRIC-based rates applied when MCI provides directory assistance telecommunications services to customers other than its retail customers, MCI would have an unfair competitive advantage by being enabled to acquire directory listing information at prices far less than those charged to directory publishers and other non-telecommunications carriers. That concern was based in part on the fact that directory listings obtained in bulk format, unlike a loop or a switch, directory assistance listings obtained in bulk format can be duplicated and resold by a competitive local exchange carrier (CLEC) if the Commission does not impose a use restriction.

The Commission generally agrees with the restriction developed by the Arbitrators. Although the Proposed Amendment does not require redrafting, it should be clarified that: (1) use of the term "MCI's local retail customers" relates to the local service provider of the telephone being used, not the individual requesting directory

assistance; and (2) the Commission, while recognizing that this decision provides a proper parity balance of the interests of SWBT and MCI, is aware that SWBT has an ongoing tariff proceeding, Docket No. 19461, that could shift this balance. Once a decision is made in that proceeding, MCI may file a post-interconnection dispute if adjustments to its interconnection agreement are necessary based on that decision.

III. Commission Decision

1. The Commission's review of the Proposed Amendments is required by FTA § 252(e). Subsection 252(e)(1) provides that any interconnection agreement "adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies."

2. In reaching its decision, the Commission has reviewed the Arbitration Award, the Proposed Amendments, and pleadings and comments filed by MCI and SWBT.

3. FTA § 252(e)(2) provides that a State commission may only reject a proposed interconnection agreement in the circumstances set forth in that subsection. An agreement "adopted by arbitration" may only be rejected if the Commission:

finds that the agreement does not meet the requirements of [FTA] section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251 or the standards set forth in subsection (d) of this section.

4. In the Arbitration Award, the Arbitrators, found that the award reflects "a resolution of the disputed issues presented by the parties for arbitration," and that "their resolution of the issues complies with the standards set in FTA § 252(c), the relevant provisions of PURA, and the Commission's dispute resolution rules."⁴

5. The Commission finds that provisions of the Proposed Amendments, all of which comply with the Arbitration Award, shall be approved. The standards of FTA § 252(c) that guided the Arbitrators in resolving disputes in arbitration are nearly identical to those in § 252(e)(2)(B) for determining approval of arbitrated agreements, i.e., the agreement must meet the requirements of FTA § 251, including FCC regulations implementing it, and must establish rates in accordance with FTA § 252(d) pricing standards. Therefore,

⁴ Arbitration Award, at 17.

arbitrated provisions that comply with the Arbitration Award will also meet the standards of FTA § 252(c).

6. All other requests for general or specific relief, if not expressly granted herein, are denied for want of merit.

SIGNED AT AUSTIN, TEXAS on the 1st day of December, 1998.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, CHAIRMAN



JUDY WALSH, COMMISSIONER